

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1047 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

VAJUBHAI BABUBHAI PATEL

Appearance:

PUBLIC PROSECUTOR for Petitioner

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 15/04/98

ORAL JUDGEMENT (Per: B.C.Patel,J.)

The State has preferred this appeal against the order of acquittal recorded by learned Addl. Sessions Judge, Gondal, Rajkot in Sessions Case No.175 of 1995 on 30th August, 1997.

#. The prosecution case, as it appears from the judgment, is as under:

Janbai, the complainant, was residing with her husband Govind Natha, who was serving as a Teacher in Vidya Mandir High School. The complainant was serving as a Teacher at Vadodar and both husband and wife used to travel on a motor bike for School. On 5-8-1995 being a Saturday, the complainant had different timings of the School and therefore, her husband left on hero honda motor bike at 6.30 a.m. from Junagadh for Vadodar. She received a telephone at about 9.45 a.m. that her husband has met with an accident and is admitted in the hospital. On receiving this information, she contacted one Hardas Savji and reached the hospital where her husband was being treated. It is alleged by the prosecution that on being questioned by the complainant, the deceased stated that when he was on the motor bike for Vadodar at about 7 a.m., near the bridge of Village Vadodar, one Babubhai Patel, the respondent-accused herein, who came all of a sudden and delivered a blow with a stick and thereafter delivered several blows as a result of which, sustained injuries and one student has brought him to the hospital. It is on this allegation, investigation commenced by Junagadh Police Station. On completion of investigation, charge-sheet was filed against the accused. The respondent-accused was committed to the Court of Sessions.

#. The prosecution examined, in all, 28 witnesses. On appreciation of evidence and submissions made by the learned advocates appearing for the parties and considering the statement of the accused recorded under sec.313 of Cr.P.C., learned Judge gave the benefit of doubt to the accused and acquitted the accused. It is against this order that the present appeal is preferred.

#. Mr.Patel, learned Addl. Public Prosecutor, who is armed with the record and proceedings with him, has argued the matter.

#. The trial Court has not accepted the evidence of witnesses. Exhs.13,14 and 15 are required to be considered at this stage. It is clear from the independent evidence that the deceased sustained injuries on account of an accident. The doctor has noted in his case papers that the injured was brought to the hospital by his wife and the complainant gave history to the Medical Officer wherein it is stated that her husband

sustained injuries on account of an accident. Entries in exhs.48 and 49 also reveal the said fact. Not only that, but in the cross-examination, the complainant has admitted that she has disclosed before the Insurance Company that her husband died because of accidental death and based on that, she received an amount. Medical evidence does not establish that the deceased sustained injuries only on account of blow delivered by the accused. It is clear from the medical evidence that the injuries were possible by an accident.

#. In view of this evidence, Mr.Patel, learned Addl. Public Prosecutor was not in a position to point out from the evidence on record that there is any independent evidence suggesting that the accused has caused the injuries to the deceased. In view of this evidence and the several contradictions which are brought on record, it would not be possible for us to say that the order of acquittal recorded by learned Addl. Sessions Judge is an order which requires any interference. Mr.Patel, learned Addl. Public Prosecutor could not point out any material from the record to point out the part played by the respondent-accused. The prosecution has sought to be relied on the statement made by the accused before Dirubhai Hamirbhai (P.W.No.14) in the presence of other three persons to the effect that while passing through the shop, accused shouted and stated that your brother-in-law has been beaten on the road at a place between Bhader and Rupavat and if he wants to take him to the hospital, he may take him. It is required to be noted that as observed by the learned Judge, this is not stated before the Police. Mr.Patel, could not point out any other evidence connecting the accused with the crime.

#. Learned Addl. Public Prosecutor was armed with record and proceedings, i.e. evidence. He could not point out any independent circumstance. In an appeal against the order of acquittal, though there is no limitation upon the power of the High Court to review at large the evidence upon which, the acquittal was founded and to reach to a conclusion that the order of acquittal should be reversed, in exercising that power and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the view of the trial Judge as to the credibility of the witnesses; ((2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at the trial; (3) the right of the accused to the benefit of any doubt, and, (4) the slowness of an appellate Court in disturbing a finding of fact arrived

at by a Judge who had the advantage of seeing the witnesses (AIR 1934 PC 227).

#. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

".... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudry* (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

#. In view of the above observations and facts and circumstances of the case, this appeal stands dismissed.

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